

REMARKS

Upon entry of this Amendment A and Response to Office action, claims 1-2, 4-69 and 91-104 will be pending. Applicants note that claims 20-36 have been found allowable, and claims 2-7 and 73-78 would be found allowable if written in independent form.

Claims 3 and 70-90 have been cancelled. Claims 37-69 and 91-104 have been withdrawn as directed to a non-elected invention. Applications reserve the right to file one or more divisional applications directed to these non-elected claims.

Additionally, claim 1 has been amended to require the water soluble neutral oligosaccharide to be a water soluble starch. Support for this amendment can be found in originally filed dependent claim 3 and also, in the instant specification on page 14, paragraph 36. Applicants respectfully request reconsideration and allowance of all pending claims.

1. Rejection of Claims 70-90 under 35 U.S.C. §112, Second Paragraph

Claims 70-90 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Office states that for the cleaning value and gentleness value, no patent exists other than Applicants' instant application that even mentions these types of tests in combination with a skin wipe. As such, the Office maintains that it is impossible for the Office to make a comparison with the prior art, and accordingly, examination of these types of claims cannot be fairly made.

Claims 70-90 have been cancelled. As such, this rejection should be withdrawn as moot.

2. Rejection of Claims 1, 12, 15, 18, 19, 70, 71, 72, 83, 86, 89, and 90 under 35 U.S.C. §102(b)

Claims 1, 12, 15, 18, 19, 70, 71, 72, 83, 86, 89, and 90 under 35 U.S.C. § 102(b) as being clearly anticipated by Lukenbach (WO 01/01949).

Claim 1 is directed to a tissue product for improving skin health. The tissue product comprises a tissue paper and a cleansing composition. The cleansing composition comprises a thermoplastic polymer and a water soluble neutral oligosaccharide. The thermoplastic polymer is selected from the group consisting of polymethylmethacrylate, methyl methacrylate crosspolymer, polyethylene, ethylene/acrylate copolymer, Nylon_12, polymethylsilsesquioxane, ethylene vinyl alcohol, polyvinyl acetate, acrylic, polyvinyl acetate acrylate, acrylates, polyvinyl dichloride, ethylene vinyl acetate, ethylene vinyl chloride, polyvinyl chloride, styrene, styrene acrylate, polymethylsilsesquioxane/styrene/butadiene, styrene/acrylonitrile, butadiene/acrylonitrile, acrylonitrile/butadiene/styrene, ethylene acrylic acid, polyethylene, urethanes, polycarbonate, polypropylene, polyesters, polyimides, and silicone resin. The water soluble neutral oligosaccharide is a water soluble starch.

Lukenbach discloses cleansing compositions suitable for use in personal cleansing applications. The cleansing compositions are disclosed as being capable of imparting superior cleansing properties and are relatively non-irritating. The cleansing composition comprises a liquid silicone; a water dispersible

component; and an ester. Examples of suitable silicones include the polydimethyl siloxanes and derivatives thereof such as hexamethylsiloxane, dimethicone, dimethiconol, and cyclomethicone. The water dispersible component could include, for example, polyethylene glycol 400, hexylene glycol, propylene glycol, polypropylene glycol-10 methylglucose ether, ethoxydiglycol, polyethylene glycol-6 caprylic/capric glyceride, ethylene glycol monobutyl ether, polyethylene glycol-8 caprylic/capric glycerides, 3-methoxy-3-methyl-1-butanol, dimethyl isosorbide, and mixtures thereof. In one embodiment, the cleansing composition can be incorporated into a cleansing system that further includes water, emulsifiers and/or thickeners, non-foaming or foaming surfactants, and one or more benefit agents. The compositions and systems may be directly applied to the skin or may be applied to a delivery implement such as a wipe, sponge, brush, or the like.

Significantly, the Lukenbach reference fails to disclose that its cleansing composition includes a water soluble neutral oligosaccharide being a water soluble starch. This is a requirement and significant aspect of Applicants' amended claim 1.

As stated in M.P.E.P. §2131, a claim is anticipated by a reference only if each and every element as set forth in the claim is found, either expressly or inherently described, in the cited reference. As Luckenbach fails to disclose a cleansing composition including a water soluble neutral oligosaccharide being a water soluble starch, Lukenbach fails to disclose each and every element as required in Applicants' claim 1. As such, claim 1 is not anticipated by the Lukenbach reference.

Claims 12, 15, 18, and 19 depend directly from claim 1. As such, claim 12, 15, 18, and 19 are patentable over the Lukenbach reference for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

3. Rejection of Claims 1, 8-11, 70-72, and 79-82 under 35 U.S.C. §102(b)

Claims 1, 8-11, 70-72 and 79-82 under 35 U.S.C. § 102(b) as being clearly anticipated by Vatter (US 2002/0015684).

Claim 1 is discussed above.

Vatter discloses a cleansing composition suitable for topical application to human skin. The cleansing composition is an oil-based cleansing composition including from about 0.1 to 30% of a crosslinked siloxane elastomer; from 10 to 80% of a solvent having a solubility parameter of less than or equal to about 9 (or 9) (cal./cm³)^{1/2}; and optionally, from about 0 to about 95% water, preferably wherein the make-up contains at least about 10% by weight, more preferably at least 25% by weight, most preferably at least 35% by weight of a silicone gum and/or resin. The crosslinked siloxane elastomer is prepared from: an organopolysiloxane having at least 2 lower alkenyl groups in each molecule; an organopolysiloxane having at least 2 silicon-bonded hydrogen atoms in each molecule; and a platinum-type catalyst. Furthermore, the crosslinked siloxane elastomer preferably has a particle size of from about 10 to about 200 microns. In one embodiment, the cleansing composition can be incorporated into an insoluble substrate for application to the skin such as in the form of a treated wipe.

Significantly, the Vatter reference fails to disclose that its cleansing composition includes a water soluble neutral

oligosaccharide being a water soluble starch. This is a requirement and significant aspect of Application's amended claim 1. While Vatter discloses using a starch for one or more optional ingredients, no where in the Vatter reference is it taught or suggested that the starch should be a water soluble starch as required in claim 1.

As Vatter fails to disclose a cleansing composition including a water soluble neutral oligosaccharide being a water soluble starch, Vatter fails to disclose each and every element of claim 1 as required under M.P.E.P. §2131 for a claim to be anticipated by a reference. As such, claim 1 is not anticipated by the Vatter reference.

Claims 8-11 depend directly from claim 1. As such, claims 8-11 are patentable over the Vatter reference for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

4. Rejection of Claims 13, 14, 16, 17, 84, 85, 87, and 88 under 35 U.S.C. §103(a).

Claims 13, 14, 16, 17, 84, 85, 87, and 88 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lukenbach (WO 01/01949).

Claims 13, 14, 16, and 17 depend directly from claim 1, which is discussed above. Claim 1 has not been rejected under 103(a) over the Lukenbach reference and, more specifically, is patentable over the Lukenbach reference for the reasons stated above. Claims 13, 14, 16, and 17 are patentable over the Lukenbach reference for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

Specifically, Lukenbach fails to disclose that its cleansing composition includes a water soluble neutral oligosaccharide being a water soluble starch and, further, there is no apparent reason to modify the cleansing composition of Lukenbach reference to include a water soluble neutral oligosaccharide being a water soluble starch.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of the case. The common sense of those skilled in the art can demonstrate why some combinations would have been obvious where others would not.¹ The Office has clearly failed to meet its burden under numbers (1) and (2) above, as the cited reference has not taught or suggested all of the claimed limitations of Applicants' claim 1, and further, there is no apparent reason for one skilled in the art to modify the reference to arrive at Applicants' claim 1. It simply would not have been obvious to one skilled in the art to arrive at Applicants' claimed combinations.

As noted above, Lukenbach fail to teach or suggest the each and every element of claim 1 (and, thus, fails to teach or

¹ *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc.*, No. 06-1402 (Fed. Cir. May 9, 2007) *See also KSR Int'l Co. v. Teleflex, Inc., et al.* 550 US____, 2007 WL 1237837 at 12 (2007).

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suggest each and every element of claims 13, 14, 16, and 17, which depend from claim 1) as there is no composition disclosed that includes a water soluble neutral oligosaccharide being a water soluble starch. Furthermore, there is no apparent reason to modify the Lukenbach reference to arrive at such a cleansing composition. As such, claims 13, 14, 16, and 17 are patentable over the Lukenbach reference.

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CONCLUSION

In view of the above, Applicants respectfully request favorable reconsideration and allowance of all pending claims. The Commissioner is hereby authorized to charge any fee in connection with this Amendment A and Response to Office action to Deposit Account Number 012384 in the name of ARMSTRONG TEASDALE LLP.

Respectfully submitted,

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Via EFS